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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,332	03/12/2004	Brandon Gerard Sudholt	SUDHOLT-1	6229

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EXAMINER
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MAGUIRE, LINDSAY M

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/799,332	<b>Applicant(s)</b> SUDHOLT ET AL.	
	<b>Examiner</b> Lindsay M. Maguire	<b>Art Unit</b> 3634	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the 'cap rail' (claim 7, line 1) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claims 1, 4, 5 are objected to because of the following informalities: claim 1, lines 4 and 6, claim 4, line 2, and claim 5, line 3, has the following spelling error "therebetween". Appropriate correction is required.

Claim 4 is objected to because of the following informalities: claim 4 recites the limitation "a display rack in accordance with claim 4" and is therefore an improper dependent claim as it cannot depend off of itself. In order to expedite the prosecution of this case on the merits, it is assumed that claim 4 depends off of claim 1. Appropriate correction is required.

Claim 17 is objected to because of the following informalities: claim 17, line 3 has the following spelling error "therethrough". Appropriate correction is required.

Claim 22 is objected to because of the following informalities: claim 22 recites the limitation "a method in accordance with claim 22" and is therefore an improper dependent claim as it cannot depend off of itself. In order to expedite the prosecution of this case on the merits, it is assumed that claim 22 depends off of claim 20. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claim 7 the applicant discloses that the display rack further comprises a cap rail (claim 7, line 1). However, a cap rail is not shown in the drawings nor is it disclosed within the specification. Therefore the examiner is unable to ascertain what is being claimed. In order to expedite the prosecution of this case, claim 7 will be construed as if cap rail was meant as a rear rail connecting the first and second elongated rails.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4, and 10 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation, "said display area is sized to receive at least one blister package therein" in lines 11-12 of claim 1 and in lines 9-10 of claim 10, and the recitation "a display area defined between the opposed channels such that opposite sides of the blister package are received within the channels" in lines 13-15 of claim 20, render the claims indefinite. In particular, a blister package is not an element of the claimed device and it is improper to seek to define claimed structure based on a comparison to some

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unclaimed element. In this case, the boundaries of the claim cannot be properly ascertained because one would not know whether their device infringed the claims until someone else later added a blister package. In other words, a device as defined in the claims would infringe the claims with one particular package with the exact same device would not infringe the claims when another blister package is used. Accordingly, the features of the device, itself, must be defined instead of relying upon a comparison with an ascertained element.

Claim 4 recites the limitation "said mounting bracket" in claim 4 line 4. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 10-18, and 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. Ruiz 6,631,812.

Ruiz discloses a rack, capable of displaying at least one blister package, comprising: a first elongated rail (16) comprising a first end (34), a second end (38), and a channel (26) extending there between; a second elongated rail (18) comprising a first end (36), a second end (40), and a channel (28) extending there between; and a siderail support member (14) substantially perpendicularly between said first and second

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elongated rail first ends such that said first elongated rail channel substantially mirrors said second elongated rail channel such that a display area is defined between said first and second elongated rail channels (Figure 1), said first elongated rail spaced a distance from said second elongated rails such that said display area is capable of receiving at least one blister package, (the device of Ruiz is fully capable of performing the function as set forth in claim 1, see Figures 1, 3, and 6).

Regarding claims 2 and 3, Ruiz further discloses a mounting bracket (60) configured to be coupled to a support structure, at least one, of the first and second elongated rails is removably coupled to the mounting bracket, and are both suspended from the mounting bracket (Figure 1).

In regards to claim 4, insomuch as the claim is best understood (given the claim objection and 35 U.S.C. 112 rejection as advanced above), Ruiz discloses that the siderail support member (14) comprises a first end (20), a second end (22), and a channel extending there between, said siderail support member channel for coupling said first and second elongated rails to a mounting bracket (60).

Regarding claim 5, Ruiz discloses a device further comprising a bracket (60) configured to be coupled to a support structure, said mounting bracket comprising a first end (62), a second end (66), and a channel extending there between (Figure 1), said channel for coupling at least one of said first and second elongated rails to a support structure.

In regards to claim 6, Ruiz discloses that the first and second elongated rails each comprise a rear surface and a front surface; each being substantially planar between the first and second ends (Figure 1).

In regards to claim 7, as it is best understood (given the 35 U.S.C. 112 paragraph rejection as advanced above), Ruiz discloses that there is a rear rail (22) configured to extend between one of said first and second elongated rails and an adjacent rack.

With respect to claim 8, Ruiz further discloses a support rail (22) extending substantially perpendicularly between said first and second elongated rail ends.

Regarding claim 10, Ruiz discloses a display rack assembly capable of displaying at least one blister package comprising at least one pair of opposed elongated rails (16, 18) coupled together by a first support rail (20) that extends between adjacent ends of said pair of elongated rails, and a second support rail (22) that extends between adjacent opposite ends of said elongated rails, each of said elongated rails comprises an outer and inner surface (Figure 1), and a channel (26, 28) extending there between, each of said channel extends from said first support rail at least partially towards said opposite ends of each respective said elongated rails, said pair of elongated rails are spaced apart such that a display area is defined between (the device of Ruiz is fully capable of performing the function as set forth in claim 10, see Figures 1, 3, and 6).

In regards to claim 11, Ruiz discloses a display rack assembly comprising a mounting means (30A, 30B, 30C) for securing said rack assembly to a support structure.



With respect to claim 12, Ruiz discloses a mounting apparatus (60) for securing the rack assembly to a support structure, at least a portion of said mounting apparatus having a hook-shaped cross-sectional profile (see Figure 1).

Regarding claim 13, Ruiz discloses a mounting apparatus (60), comprising a first end (62), a second end (66) and a channel extending at least partially there between (Figure 1).

In regards to claim 14, Ruiz discloses a rack assembly further comprising a mounting apparatus for securing said rack assembly to a support structure, said pair of elongated rails configured to be removably coupled to the support structure (Figure 1).

Regarding claims 15 and 16, Ruiz discloses a rack assembly comprising a mounting apparatus (60) for securing said rack assembly to a support structure, at least one or both elongated rails are configured to be suspended from said mounting apparatus (column 4, lines 34-35).

With respect to claim 17, Ruiz further discloses that at least one of the first and second support rails comprise a channel (26, 28) extending axially there through between a first end and a second end of said respective support members (Figure 1).

In regards to claim 18, Ruiz discloses that at least one of the first and second support rails (20, 22) extends substantially perpendicularly between said pair of elongated rails (16, 18).

Regarding claim 20, Ruiz discloses a method capable of displaying a blister packages within a display rack comprising, coupling a first elongated rail (16) to a support member (14), wherein the first elongated rail includes a first end (34), a second

end (36), and a channel (26) extending from the first end at least partially towards the second end; positioning a second elongated rail (18) adjacent the support member, wherein the second elongated rail includes a first end (36) and a second end (40), and a channel (28) extending from the first end at least partially towards the second end; coupling the second elongated rail to the support rail such that the channel defined within the second elongated rail substantially mirrors that of the first elongated rail (Figure 1); coupling the assembly to a support structure (column 4, lines 17-41); and is able to slidably couple at least one blister package into a display area (the device of Ruiz is fully capable of performing the function as set forth in claim 20, see Figures 1, 3, and 6).

In regards to claim 21, Ruiz further discloses that coupling the assembly to a support structure further comprises suspending the assembly from the support structure (column 4, lines 17-21).

With respect to claim 22, insomuch as the claim is best understood (given the claim objection as advanced above), Ruiz discloses that suspending the assembly from the support structure further comprises removably coupling at least one of the support structure, the first elongated rail, and the second elongated rail to a mounting bracket (60, column 4, lines 34-41).

Regarding claim 23, Ruiz further discloses that coupling the second elongated support rail to the support rail comprises coupling the second elongated rail to the support rail such that the support rail extends substantially parallel between the first and second elongated rails (Figure 1).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruiz U.S. Pat. No. 6,631,812 as applied to claims 1 and 10 as advanced above, alone.

Ruiz discloses a display rack and a display rack assembly substantially as claimed, as advanced above.

The claims differ from requiring that the first and second elongated rails are each fabricated from a metallic material. However, Ruiz does disclose, "any suitable size, shape, or type of elements or materials could be used" (column 3, lines 30-31). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device of Ruiz from a metallic material for such basic reasons, as manufacturability, durability, aesthetics, cost, etc.

***Conclusion***

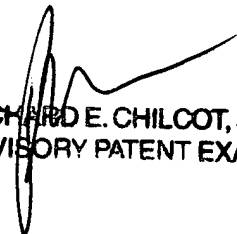
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lindsay M. Maguire whose telephone number is 571-272-6039. The examiner can normally be reached on M-F: 7-4.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LMM  
11/29/05

  
**RICHARD E. CHILCOT, JR.**  
**SUPERVISORY PATENT EXAMINER**